



POLICE DEPARTMENT CITY OF NEW YORK

June 30, 2017

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Donald Hook
Tax Registry No. 920400
43 Precinct
Disciplinary Case No. 2015-14485

Police Officer Jose Cortez
Tax Registry No. 936393
43 Precinct
Disciplinary Case No. 2015-14486

Charges and Specifications:

Disciplinary Case No. 2015-14485

1. Said Police Officer Donald Hook, on or about March 3, 2015, at approximately 2215 hours, while assigned to the 43rd Precinct and on duty, inside of [REDACTED] engaged in conduct prejudicial to the good order, efficiency, or discipline of the New York City Police Department in that he entered said residence without sufficient legal authority.

P.G. 203 10, Page 1, Paragraph 5 – ABUSE OF AUTHORITY

2. Said Police Officer Donald Hook, on or about March 3, 2015, at approximately 2215 hours, while assigned to the 43rd Precinct and on duty, inside of [REDACTED] was discourteous in that he refused to provide his shield number to Person B.

P.G. 203-09, Page 1, Paragraph 1 PUBLIC CONTACT – GENERAL

3. Said Police Officer Donald Hook, on or about March 3, 2015, at approximately 2215 hours, while assigned to the 43rd Precinct and on duty, en route to the 43rd Precinct, Bronx County, was discourteous in that he stated in sum and substance, "FUCK THAT DAT. I'LL TAKE YOU TO THE FUCKING JUDGE IN THE MORNING IF YOU DON'T SHUT THE FUCK UP."

P.G. 203-09, Page 1, Paragraph 2 – PUBLIC CONTACT GENERAL

Disciplinary Case No. 2015-14486

1. Said Police Officer Jose Cortez, on or about March 3, 2015, at approximately 2215 hours, while assigned to the 43rd Precinct and on duty, inside of [REDACTED] engaged in conduct prejudicial to the good order, efficiency, or discipline of the New York City Police Department in that he entered said residence without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5 – ABUSE OF AUTHORITY

Appearances:

For CCRB APU: Timothy Jones, Esq.
Civilian Complaint Review Board
100 Church Street, 10th Floor
New York, NY 10007

For Respondents: John Tynan, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10038

Hearing Dates:

May 16 and 30, 2017

Decision:

Not Guilty

Trial Commissioner:

ADCT Jeff S. Adler

REPORT AND RECOMMENDATION

The above-named members of the Department appeared before me on May 16 and May 30, 2017. Respondents, through their counsel, entered pleas of Not Guilty to the subject charges. Hearsay statements of complainants Person A and Person B were admitted into evidence. Each Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondents not guilty of the charged misconduct.

FINDINGS AND ANALYSIS

This case originated with a dispute between [REDACTED] neighbors regarding the shoveling of snow in their common driveway. On the evening of March 3, 2015, husband-and wife complainants Person A and Person B, who resided in a house [REDACTED] got into a physical altercation with their next door neighbors [REDACTED]. One of the people from [REDACTED] called 911, and Respondents arrived at the location at about 2215 hours. After speaking with the occupants [REDACTED] regarding what had occurred, the officers went [REDACTED] looking for Person A. At issue is whether Respondents committed misconduct by entering [REDACTED] without sufficient legal authority, and whether Respondent Hook was discourteous both to Person A and Person B.

CCRB made repeated efforts to secure the appearances of Person A and Person B for trial, and adjournments were granted to accommodate their schedules, but neither appeared to testify. Instead, their hearsay statements were admitted into evidence: the recording of Person A's CCRB interview of March 19, 2015, along with the accompanying transcript, were admitted as CCRB Ex. 3 and 3A, respectively; a recording of CCRB's telephone interview of Person B on March 6, 2015, along with the transcript, were admitted as CCRB Ex. 2 and 2A; and a recording of CCRB's in-person interview of Person B on March 19, 2015, and the transcript, were admitted as CCRB Ex. 1 and 1A. Hearsay evidence is admissible in an administrative tribunal, and a case may be proven with such evidence provided it is found to be sufficiently reliable and probative on the issues to be determined. See *Ayala v. Ward*, 170 A.D.2d 235 (1st Dept. 1991); *In the Matter of 125 Bar Corp. v. State Liquor Authority of the State of New York*, 24 N.Y.2d 174 (1969). To be sure, it is preferable to have testimony from a live witness, where opposing counsel has the opportunity to cross-examine, and the court can observe the demeanor of the

witness. In the absence of such live testimony from these witnesses here, this tribunal listened carefully to the prior recorded statements of Person A and Person B, and reviewed the accompanying transcripts.

In his statement, Person A explained how he ran outside to assist his wife, who was in a scuffle with the neighbor. The neighbor's two sons came outside as well, and combined they brought Person A to the ground. As Person A was getting back to his feet, the neighbor threw him back to the ground. Person A claimed that as a result of the altercation, he sustained a "black eye and a busted nose." According to Person A, his mother-in-law, who came outside at some point during the fight, also suffered a black eye. (CCRB Ex. 3A at 4-6, 12)

After the fight, Person A went back inside his house. At some point, Person B told him the police wanted to speak with him. Person A came downstairs and told the officers that he had been jumped, but Respondent Hook told him to put his hands behind his back because he was being arrested. Person A admitted that Person B was "hysterical" as he was being handcuffed, and Respondent Hook pushed Person B into a door. (CCRB Ex. 3A at 7)

As the officers were bringing him outside the house to the police car, Person A noticed one of the neighbor's sons standing in between the houses staring at him. (CCRB Ex. 3A at 8) Person A claimed that while inside the car, he repeatedly questioned Respondent Hook regarding why he was being arrested, until Respondent Hook finally said to him, "You know what? Fuck the DAT. You're going straight to the judge in the morning if you don't shut the fuck up." (CCRB Ex. 3A at 12)

In her phone interview on March 6, 2015, Person B briefly described her interaction with Respondents. According to Person B, the tall officer (Respondent Hook) "wouldn't tell me his name." She stated that when her husband, who was bleeding from his face, asked for medical

attention, the officers told him to “shut the fuck up before we take you downtown.” Person B was troubled that her husband was arrested without the officers giving them a sufficient opportunity to explain what happened. She claimed that when she asked the officers why her husband was being arrested, Respondent Hook said “ma’am, get the fuck out of my face,” and he pushed her into a door. Person B also was upset that the officers accused her of being a liar regarding her husband’s whereabouts; she explained to the officers that she was an attorney, and would not risk losing her license by lying to them. She claimed that as soon as she mentioned she was an attorney, the handcuffs came out and they arrested her husband. While Person A was placed in the police car, the neighbors [REDACTED] were outside laughing and taking photographs of her husband. (CCRB Ex. 2A at 6, 9-10, 12-13, 16)

At her in-person interview two weeks later, Person B essentially repeated what she had said in her phone interview, while providing greater detail on some points. She claimed that the neighbor and his two sons were “whaling” on her husband, before a girlfriend of one of the sons called 911. (CCRB Ex. 1A at 5-6) The police arrived, and Respondent Cortez pushed Person B aside as they entered her foyer; Person B stated that she “kind of let that go” because she and her husband had not done anything wrong, and she figured maybe the officers just wanted privacy. Person B described her frustration at repeatedly being told to “shut the fuck up” by the officers when she tried to tell them what had happened. She reiterated how the officers accused her of being a liar when she told them her husband wasn’t upstairs, and that she tried to explain to them that she was an attorney and wouldn’t lie to them. It occurred to Person B that the officers didn’t like attorneys, which is why they arrested her husband. (CCRB Ex. 1A at 8-10, 15, 38, 44-47)

According to Person B, her husband came downstairs and was told to put his hands behind his back. Person B admitted she was upset, but insisted she only gestured with her hands and did not try

to prevent the officers from handcuffing Person A. Nevertheless, Respondent Hook pushed her into the foyer door. The officer explained to her that she had put her hands on him first, which she denied. (CCRB Ex. A at 10-12, 51-53, 60)

Person B stated that when the officers first arrived, she asked for their names and badge numbers. Both officers were wearing jackets that concealed their shields. Respondent Cortez identified himself, but Person B claimed that Respondent Hook would not tell her his name. Respondent Hook's name appears on the Desk Appearance Ticket given to Person A at the precinct, though no shield number is listed (CCRB Ex. 4). Person A was able to see Respondent Hook's shield at the precinct. (CCRB Ex. 1A at 33-35, 39; Ex. 2A at 7)

Respondent Cortez, who has been with the Department since 2005, testified that he and his partner first interviewed the neighbors [REDACTED] in response to the 911 call. Respondent Cortez observed markings on the face of one of the neighbors, who told the officers about the altercation with the residents [REDACTED]. The officers then went next door looking for Person A, but Person B told them he wasn't home. Respondents went back to their vehicle, drove around the block, and returned [REDACTED] a few minutes later. The officers knocked on the door of the house which was opened by one of the residents, and Respondent Cortez observed Person A standing there. According to Respondent Cortez, the officers began to speak with Person A as he and Person B stood in the threshold of the doorway with the door wide open. Person B's mother, who had earlier emerged from her first floor apartment, invited the officers inside the vestibule to talk. Respondent Cortez noted that since the next door neighbors were outside at the time, he wanted to go inside and speak with Person A "without interference of the neighbors." (Tr. 28-29, 34-35, 38-42, 56, 90, 93-95, 99)

Once inside, the officers asked Person A about the altercation. Respondent Cortez testified that Person A did not say that he was hit by the neighbor, and so the officers decided to arrest Person A. (Tr. 40, 116-117) As Respondent Hook was attempting to place the handcuffs on Person A, Person B grabbed Respondent Hook's arm trying to prevent him from handcuffing her husband. Respondent Hook shrugged her off, and Respondent Cortez pushed her against the wall and told her to stop interfering. (Tr. 46-47, 61, 121-122) A handcuffed Person A was brought out to the police car without further incident. Respondent Cortez could not recall whether he was asked by Person A or Person B for his name and shield number. He could not recall Respondent Hook threatening to bring Person A to court instead of issuing a DAT. According to Respondent Cortez, neither he nor his partner used any profanities towards Person A or Person B. (Tr. 49, 51, 128)

Respondent Hook, who joined the Department in 1997, testified that after observing scratches and bruises on an elderly man [REDACTED], he and his partner went next door looking for Person A. Person B told them that her husband was not home, but from his experience Respondent Hook did not believe her. He decided to drive once around the block, with the expectation that Person A might reappear. As the officers pulled back up, they did, indeed, observe Person A, who was standing in the doorway of the house with Person B. The front door was wide open, and Person A "was standing in the frame of the door." (Tr. 140 144, 168-173)

The officers approached, and Respondent Hook greeted Person A, asking him how he was doing. Person A, in turn, greeted the officers and they began discussing what had occurred. Respondent Hook described Person A as "cooperative." Rather than continue the discussion on the porch, Respondent Hook asked Person A and Person B to take a step back; they complied, and the officers followed them into the vestibule without objection. Respondent Hook explained that he proceeded in this manner for tactical reasons: first, he noticed that the neighbors [REDACTED] had

disregarded his instructions to stay inside their house, and so the officer was concerned about a possible flare up between the feuding families. Also, the porch on which they initially were standing was a small area with steps right behind them, leaving the officers in a precarious and unsafe position in the event of a physical struggle (see photograph of front of house, Resp. Ex. A). As such, Respondent Hook felt it best to continue the investigation inside the vestibule area, out of harm's way. (Tr. 148, 154, 174, 190-194)

Once inside the vestibule, which was "tight, 6, 8 feet," Respondent Hook asked Person A what happened and why he had not come to the door when the officers were there the first time. Not satisfied with Person A's response, the officers determined to place Person A under arrest, and asked him to place his hands behind his back, which he did. According to Respondent Hook, Person B, who was visibly upset that only Person A was being locked up, jumped on Respondent Hook's right arm as the officers were handcuffing Person A. Respondent Hook raised his arm in order to get Person B off of him, she fell to the floor, and a handcuffed Person A was brought outside to the police car. (Tr. 148-149, 152, 175-177) Respondent Hook testified that he was not asked by any of the residents [REDACTED] to provide his name or shield number. (Tr. 153, 178-179) Also, he denied ever saying to Person A, "Fuck that DAT. I'll take you to the fucking judge in the morning if you don't shut the fuck up." (Tr. 180)

There were discrepancies in the different versions of what occurred, requiring this tribunal to make a credibility assessment. In her hearsay statements, Person B portrayed the officers, particularly Respondent Hook, as extremely aggressive during the encounter. However, the pervading sense from listening to her statements is that she was preoccupied with the officers' outrageous suggestion that she, an attorney, would have lied to them about her husband's whereabouts. She also appeared to be extremely upset that the officers chose to arrest her

husband and no one else, possibly because of their dislike of attorneys. It would have been valuable to hear Person B questioned on whether her personal aversion to the officers' behavior led her to embellish what actually occurred. Unfortunately, since Person B did not appear to testify, she was not subjected to cross examination on these and other issues, and I do not credit her hearsay account of what transpired.

Similarly, much of Person A's hearsay statement was devoted to his dismay at being the only one arrested, despite the injuries he incurred during the altercation with the neighbors. Person A did not offer much insight into the officers' entry into the home, but he did provide details as to his conversation with Respondent Hook while in the police car. Again, it would have been useful to hear Person A questioned on whether his displeasure with being arrested led him to exaggerate his account of what was said to him by Respondent Hook. Person A and Person B may also have exaggerated their descriptions of the fight with the neighbors. They both portrayed their encounter with the neighbors as rather one-sided, with the two of them as the victims; this portrayal is somewhat dubious, however, when one considers that it was the neighbors who called 911, which would have been less likely if the altercation unfolded the way Person A and Person B described it.

The Respondents, meanwhile, each testified and were subjected to cross-examination. That cross revealed inconsistent versions of how they entered the home, though otherwise the officers' accounts were essentially consistent with each other. Between the two, Respondent Cortez appeared much less sure of himself when questioned about what had transpired. On cross examination it was established that at his CCRB interview, Respondent Cortez initially had difficulty recalling the details of the incident, and that uncertainty was evident at times during his trial testimony as well. Respondent Hook, meanwhile, was an extremely credible witness. He

was detailed in his testimony, his description of events was logical, and he answered questions willingly.

It is within this framework that we assess the charges against Respondents.

The first specification against each Respondent alleges that the officers entered the vestibule of the house [REDACTED] without sufficient legal authority. Counsel for CCRB argues that the officers' warrantless entry [REDACTED] constituted a *Payton* violation. Under *Payton*, police are prohibited from crossing the threshold of a suspect's home to effect a warrantless arrest unless there are exigent circumstances or a valid consent to enter. Consent can either be explicit, or implied through the conduct of the parties involved. See *NYPD Legal Bureau Bulletin*, Vol. 44, No. 2 (January 2014).

In this case, when the officers first encountered Person A, the front door of the house was wide open, and the suspect was standing in the doorway. At that point, the officers could lawfully have arrested Person A as he stood at the threshold of his residence. It is well-settled that an officer does not violate the protections of *Payton* when he makes a warrantless arrest of an individual who is standing at the threshold of the door to his home. See *NYPD Legal Bureau Bulletin*, Vol. 43, No. 5 (December 2013).

Instead of apprehending Person A in the doorway, Respondent Hook asked the suspect to step back inside the vestibule of the house, and the officers followed him inside where they continued the investigation. Respondent Hook, an experienced officer with nearly 20 years on the job, explained that tactical concerns led to his taking this approach. Specifically, the neighbors, who were upset about the fight that had just occurred, had come back outside, disregarding the officer's instruction to remain inside their house. The officers were in a potentially vulnerable position, standing on a small porch with stairs directly behind them.

Respondent Hook understandably wanted to avoid an unsafe scenario where "things get way out of hand." His intention was to maintain control of the situation while they concluded their investigation.

Person A did step back into his vestibule, and was followed inside by Respondents. Respondent Cortez testified that the officers had verbal consent from the mother-in-law to enter the vestibule. Respondent Hook did not hear that invitation to enter. Even so, under the totality of circumstances presented here, Respondent Hook reasonably believed that the officers had Person A's and Person B's tacit consent to enter. Person A did not run as the officers approached; rather, he and Person B remained in the doorway waiting to speak with the officers, with the front door wide open. Respondent Hook and Person A greeted each other in a cordial manner, and began to discuss what had transpired. Person A was cooperative during their interaction. When asked by Respondent Hook to step back so that they could continue their discussion inside, Person A and Person B did so willingly. I credit Respondent Hook's testimony that neither Person A nor Person B objected in any way when the officers followed them into the vestibule, presumably because they were eager to press charges against their neighbors. Also, Person A and Person B may well have preferred that their initial interaction with the officers occur inside their house, out of view of the neighbors; indeed, both Person A and Person B were later upset how the neighbors, who were still outside, were mocking Person A as he sat in the patrol car after being arrested. Under these specific circumstances, it was reasonable for Respondents to believe that Person A and Person B were consenting to the officers' entry.

In this specific context, the officers' entry inside [REDACTED] did not constitute misconduct. With the tacit consent of Person A and Person B, the officers followed them into the vestibule area of the house to continue their investigation. After a brief conversation, the officers decided to place

Person A under arrest. It was only then that the officers began to encounter resistance, particularly from Person B who physically interfered with the officers' efforts to handcuff her husband. The officers' entry into the vestibule of the house was done with the voluntary consent of Person A and Person B, and I find each Respondent not guilty of Specification 1.

Respondent Hook is charged with two additional specifications. Specification 2 alleges that he refused to provide his shield number to Person B. In her hearsay statements, Person B stated that she asked both officers for their names and badge numbers. She claimed that Respondent Hook refused to provide his name, and his shield was concealed by the jacket he was wearing. Respondent Hook denied hearing any such request, and testified that his shield was not concealed by a jacket.

For the reasons discussed above, this tribunal does not credit Person B's uncorroborated account of what occurred. Respondent Hook was credible in his denial, and his description of events made sense. There was no reason for him to conceal his name, since he was listed as the arresting officer on the DAT provided to Person A. Even though the DAT did not contain Respondent Hook's shield number, Person B, herself, acknowledged that at the precinct. Respondent Hook's shield was on his chest, plainly visible to Person A. The record has failed to establish, by a preponderance of the credible evidence, that Respondent Hook failed to provide his shield number, and I find him not guilty of Specification 2.

Specification 3 alleges that Respondent Hook was discourteous to Person A, saying to him, "Fuck that DAT. I'll take you to the fucking judge in the morning if you don't shut the fuck up." In his hearsay statement, Person A claimed that Respondent Hook made this remark to him while they were inside the police car. Respondent Hook testified that he never said any such thing to Person A.

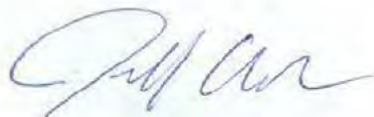
As discussed above, Person A evidently was upset that he, alone, was arrested, and so he had reason to embellish his description of what transpired. His uncorroborated allegation that Respondent Hook made that remark to him in the police car was untested by cross-examination. In contrast, this tribunal was able to observe Respondent Hook's demeanor on the witness stand, through direct and cross examination. Respondent Hook's testimony, including his denial on this point, was straight-forward and credible.

Moreover, Person A's accusation was not consistent with Respondent Hook's actual behavior during the incident. In contrast to Person A's portrayal of him, Respondent Hook was measured in his dealings with Person B and Person A. Person B was not charged with obstructing governmental administration despite interfering with the arrest, and Person A was issued a DAT and released in lieu of being held overnight and brought before a judge the next morning. Taking into account Respondent Hook's conduct throughout the encounter, this tribunal is not persuaded that he made the discourteous remark attributed to him by Person A. The record has failed to establish, by a preponderance of the credible evidence, that Respondent Hook made the discourteous comment to Person A, and I find him not guilty of Specification 3.

Respectfully submitted,

APPROVED

NOV 09 2017
James P. O'Neill
JAMES P. O'NEILL
POLICE COMMISSIONER



Jeff S. Adler
Assistant Deputy Commissioner Trials